

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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BRUCE BIRCH,

Plaintiff,

v.

STEVE KOSACH,

Defendant.

Case No. 3:16-cv-00422-MMD-WGC

ORDER ACCEPTING AND ADOPTING
REPORT AND RECOMMENDATION OF
MAGISTRATE JUDGE
WILLIAM G. COBB

I. SUMMARY

Before the Court is the Report and Recommendation of United States Magistrate Judge William G. Cobb (ECF No. 3) ("R&R") relating to Plaintiff's Application to Proceed *In Forma Pauperis* (ECF No. 1). Plaintiff filed his Objection to the R&R on August 17, 2016 ("Objection") (ECF Nos. 4 and 5.¹) Attached to Plaintiff's Objection is a Motion requesting an extension of time in order to amend his Objection. (ECF No. 102.)

II. LEGAL STANDARD

This Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge's report and recommendation, then the court is required to "make a *de novo* determination of those portions of the [report and recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). In light of Plaintiff's

¹Plaintiff filed his objection twice.

1 objection, the Court engages in a *de novo* review to determine whether to adopt
2 Magistrate Judge Cobb's Recommendation.

3 **III. DISCUSSION**

4 The Magistrate Judge recommends that the Court grant Plaintiff's application to
5 proceed *in forma pauperis* but dismiss this action with prejudice. In his Complaint,
6 Plaintiff seeks to have Judge Steve Kosach of the Second Judicial District of Washoe
7 County ("Judge Kosach") removed from presiding over a civil suit brought by Plaintiff in
8 which Judge Kosach is supposedly a named defendant. (ECF No. 1-1 at 2.) The
9 Magistrate Judge recommends dismissal with prejudice, as state court judges are
10 entitled to judicial immunity for acts performed in their official capacity, see *Mireles v.*
11 *Waco*, 502 U.S. 9, 11 (1991), and allegations of bad faith or malice are insufficient to
12 overcome this immunity, *id.* (citing to *Pierson v. Ray*, 386 U.S. 547, 554 (1967)).
13 Although Plaintiff states in his Complaint that he is also suing Judge Kosach in his
14 individual capacity, Plaintiff's reason for bringing suit against Judge Kosach is his
15 averment that Judge Kosach refuses to recuse himself from presiding over the
16 aforementioned civil suit. (ECF No. 1-1 at 1.) Because the purpose for Plaintiff's *in forma*
17 *pauperis* application is to compel Defendant to perform an act he may do only in his
18 official position as a judge, Plaintiff's additional filing of a motion to extend time to amend
19 his objection (ECF No. 1-2) is denied.

20 It is therefore ordered, adjudged and decreed that the Report and
21 Recommendation of Magistrate Judge William G. Cobb (ECF No. 3) is accepted and
22 adopted in its entirety.

23 It is ordered that Plaintiff's *in forma pauperis* application is granted and that
24 Plaintiff is required to make monthly payments of twenty percent (20%) of the preceding
25 month's income credited to his account each time the amount in his account exceeds
26 \$10 until the filing fee is paid.

27 It is ordered that this action is dismissed with prejudice.

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1 The Clerk is instructed to enter judgment in accordance with this Order and close
2 this case.

3 DATED THIS 30th day of December 2016.

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6 MIRANDA M. DU
7 UNITED STATES DISTRICT JUDGE
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